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In re Application of
Mark Rumer
Application No. 09/842,559
Filed: April 25, 2001
For: ETHERNET BASED TDM SWITCH

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the petition filed October 16, 2003 under 37 C.F.R. 1.137 requesting the withdrawal of the holding of abandonment, which is treated as a petition to withdraw holding of abandonment pursuant to 37 C.F.R. § 1.181 and MPEP 711.03(c). No fee is required.

The petition is **GRANTED**.

The application was held abandoned for failure to respond in a timely manner to the final Office action mailed on January 29, 2003. A Notice of Abandonment was mailed on September 26, 2003.

Petitioner asserts that a proper response was in fact timely filed in the form of a Request for Continued Examination and amendment. In support of the petition, petitioner submitted a copy of a date-stamped post card receipt acknowledging receipt of the Request for Continued Examination, the amendment and the RCE fee, among other items, in the United States Patent and Trademark Office (Office) on May 6, 2003. Petitioner submitted copies of the aforementioned RCE transmittal and amendment with the instant petition.

The original response is not of record in the file and cannot be located. However, M.P.E.P. § 503 states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." The United States Patent and Trademark Office's Revenue Accounting and Management software indicates that the fee for the Request for Continued Examination was in fact received and processed on May 6, 2003. Accordingly, it is concluded that the Request for Continued Examination and amendment was received in the Office but was not matched with the application file.

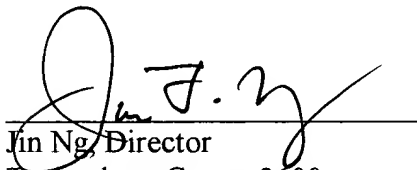
MPEP §512 states in part "Under 37 CFR 1.8, a person may state on certain papers directed to the Office (exceptions are stated in 37 CFR 1.8), the date on which the paper will be deposited in the United States Postal Service or transmitted by facsimile. If the date stated is within the period for reply, the reply in most instances will be considered to be timely. This is true even if the paper does not actually reach the Office until after the end of the period for reply. The Certificate of Mailing procedure does not apply to papers mailed in a foreign Country. [emphasis added]

The date-stamped on the post card of May 6, 2003, is after the due date for the response. However, under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 C.F.R. § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 C.F.R. § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The amendment and Request for Continued Examination bears a proper certificate of mailing in compliance with the requirements of 37 C.F.R. § 1.8(a)(1) as set forth above. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **GRANTED**.

The application file will be forwarded to the Technology Center's technical support staff for processing of the Request for Continued Examination and entry of the amendment. Thereafter, the application file will be forwarded to the examiner for action in due course.


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